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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Donn P. Cummings

Serial No.: 10/821,632

Filed: April 9, 2004

For: PLANTS AND SEEDS OF CORN
VARIETY I082216

Group Art Unit: Unknown

Examiner: Unknown

Atty. Dkt. No.: DEKA:351US

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: MS PETITIONS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:

August 20, 2004

Date

Robert E. Hanson

I. PETITION UNDER 37 C.F.R. 1.53(e)(2) TO ACCORD FILING DATE AND
II. RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION
FILED UNDER 37 C.F.R. 1.53(B)

OFFICE OF PETITIONS

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

In response to the Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b), dated June 24, 2004, Applicant hereby petitions under 37 C.F.R. 1.53(e)(2) for the office to accord a filing date of April 9, 2004, pursuant to 37 C.F.R. 1.53(b), and provide herewith the items requested in the Notice.

I. PETITION

In support hereof Applicant provides the following information:

08/24/2004 JADD01 00000039 10821632

01 FC:1460

130.00 DP

Applicant filed the instant application on April 9, 2004. A Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b) was mailed June 24, 2004, indicating that a filing date was not accorded to the referenced nonprovisional application for a failure to supply the drawings.

In response, Applicants note that the application was deposited without drawings because drawings are **not necessary for an understanding of the patented subject matter under 35 U.S.C. §113**. Applicants additionally respectfully note that under M.P.E.P. §608.02, an OIPE formality examiner should **not** treat an application without drawings as incomplete for a filing date under 35 U.S.C. § 111 and § 113 if the application contains:

(A) at least one process claim including the term "process" or "method" in its introductory phrase;

The current application includes at least one process claim and therefore the Notice was improperly issued for this additional reason.

Withdrawal of the Notice of Incomplete Provisional Application is requested in view of the foregoing. Pursuant to 37 C.F.R. § 1.17(h), a check in the amount of \$130.00 is enclosed in payment of the appropriate fee for this petition.

Applicants have therefore shown compliance with the requirements of 37 C.F.R. §1.53(b) in the instant application and respectfully request the office to accord a filing date of April 9, 2004, and to refund the amount of the petition fee of \$130.00 to Fulbright & Jaworski Deposit Account No. 50-1212/DEKA:351US.

II. RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION FILED UNDER 37 C.F.R. 1.53(b)

In response to the Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b), dated June 24, 2004, there are enclosed herewith:

- (a) Declaration executed on behalf of Marvin L. Boerboom;
- (b) Our check in the amount of \$1402.00 to cover the basic filing fee (\$770.00 - utility large entity); surcharge for late filing (\$130.00); additional claims fee (\$502.00); and
- (c) A copy of Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b).

An Assignment to Monsanto Technology, L.L.C. and a check for \$40.00 are being filed under separate cover.

If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner is authorized to deduct or credit said fees from or to Fulbright & Jaworski Deposit Account No.: 50-1212/DEKA:351US.

Please date stamp and return the accompanying postcard to evidence receipt of these documents.

Respectfully submitted,



Robert E. Hanson
Reg. No. 42,628
Attorney for Applicant

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201

Date: August 20, 2004